



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST
REC'D
CLOSED

Date: JUL 13 2001

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated in the state of [redacted] on [redacted]. Initially you were incorporated in [redacted] as [redacted]. You assert that you are a "spin-off" of a for-profit entity that was incorporated as [redacted] in [redacted]. You subsequently changed your name to [redacted] (the former name of the for-profit entity). The for-profit entity then changed its name to [redacted].

When the "spin-off" occurred, total assets transferred to you consisted of a depreciated computer, printer, and fax machine. The for-profit entity ([redacted]) continues to hold all of your vendor license agreements. It markets your organization by selling advertising, merchandise, and media.

Your primary philosophy and focus is hockey development for player's between the ages of [redacted] and [redacted] for advancement to Division I and III college hockey. The direct governing body of your league and all similar leagues within the country is [redacted].

You promote players, coaches, officials and trainers for collegiate and professional careers. You promote your program to scouts of the NCAA and Professional Hockey Leagues. You state you are a developmental league for young athletes to learn and improve their skills for future participation in college, professional, and Olympic programs.

The players are provided with exposure to both college and professional coaches. Talented players are provided opportunities to be selected by college drafts or the National Hockey League as professional players. The players maintain amateur status since they are

not paid for their participation in the sport. They are helped to secure apartments if necessary and part-time or fulltime employment so they can pursue their sports goals. Travel and meal expenses are picked up for the players when they go on the road. Players must audition to play on a team.

Your league consists of fourteen team members. Twelve of the 14 team owners make-up your Board of Directors. Your Board of Directors and Officers are:

<u>Position:</u>	<u>Owner of:</u>
President	
Vice-President	
Vice-President	
Treasurer	
Secretary	

These individuals were also the owners/principal stockholders of the predecessor organization. You state that the income received from teams in the league is information not privy to the rest of the league, therefore not available.

Membership in your league may be obtained by any person of good repute, having access to adequate facilities for the conduct of the sport of ice hockey, and possessing sufficient financial and organizational stability, as determined by the [REDACTED]. Membership fees for [REDACTED] were [REDACTED] per team, plus \$ [REDACTED] fan based on the previous year's attendance.

[REDACTED] is the President of [REDACTED] and is also your director. He owns and operates three junior hockey teams, two of which play in your league. You state that he receives no compensation as President of your league nor [REDACTED].

You intend to raise funds by initiation fees from new teams, assessments of the member teams and subsidies from [REDACTED]. You are a participating member of [REDACTED], the governing body of all hockey within the United States. The subsidies, approximately \$ [REDACTED] to \$ [REDACTED] are based on the number of League hockey players who are drafted by the National Professional Hockey Leagues and the number of League hockey players that sign letter of intent to participate in Division I college hockey programs.

You state that assessments are a league charge to each team in the league. It is used to pay for the operations of the league. The assessments for each team in [REDACTED] through [REDACTED] were:

- c. the athletes have to demonstrate a certain level of talent and achievement in order to receive support from the organization;
- d. the organization provides intensive daily training, as opposed to sponsoring weekend events that are open to and attract a broad competitors. IRM 3.22.4

To meet the operational test, Reg. 1.501(c)(3)-1(d)(i)(ii) of the regulations states that an organization must be engaged in activities furthering "public" purposes rather than private interests. It must not be operated for the benefit of designated individuals or the persons who create it.

In determining whether an organization is operated for a public benefit rather than a private benefit, a court may consider the size of the board of directors and their control of the organization. Western Catholic Church v. Comm., 73 T.C. 196 (1979).

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980) aff'd, 670 F.2d 104 (9th Cir. 1980), the Tax Court considered the qualification for exemption of an organization purporting to be a church. The applicant was controlled by three family members. The court stated:

While this domination of petitioner by the three Harberts, alone may not necessarily disqualify it for exemption, it provides an obvious opportunity for abuse of the claimed tax-exempt status. It calls for open and candid disclosure of all facts bearing upon petitioner's organization, operations, and finances so that the Court, should it uphold the claimed exemption, can be assured that it is not sanctioning an abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that petitioner fails to meet the requirements of section 501(c)(3).

Thus, close control of an applicant, because of the potential for abuse, requires a clear demonstration that private interests will not be served.

You meet the organizational test. Your Articles of Incorporation state your purpose as to exclusively foster and promote national competition in amateur athletics through the establishment of an amateur hockey league providing a stable, competitive atmosphere for the development of both individual and team skilled hockey players, and for any other lawful purpose not for pecuniary gain within the meaning of section 501(c)(3) of Code.

You fail the operational test. Although you otherwise qualify you are disqualified given that you excessively benefit private interests. Your league is comprised of 14 teams. Twelve of the team owners are on the Board of Directors. Five of the owners also serve as officers. Your directors also serve on the Board of [REDACTED], the for-profit entity. This overlapping of control while collectively conducting business raises concern whether you are operated for exempt purposes. You must clearly establish that you are not operating for the benefit of private interests. Here you have failed to do so.

In P.L.L. Scholarship v. Commissioner, 82 T.C. (1984), an organization operated bingo

[REDACTED]

at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. The board was self-perpetuating. The Court reasoned that since the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners. The organization claimed that it was independent because there was separate accounting and no payments were going to the bar. The Court was not persuaded.

A realistic look at the operations of these two entities, however, shows that the activities of the taxpayer and the [REDACTED] were so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements do not change that fact.

The Court went on to conclude that the organization had a substantial nonexempt purpose.

Here, twelve of the 14 team owners make-up your Board of Directors and the [REDACTED] (the for-profit entity). These individuals act as directors for you and directors for the for-profit entity all while managing their private interests in the ownership of their respective teams. This set-up makes it difficult to find the necessary delineation between you and the directors acting in their professional and private capacity.

Moreover, the for-profit entity continues to hold all of your vendor license agreements. It is your marketing organization and sells advertising, merchandise, and media. You state in your application that you promote the league to fans and media via radio/ TV broadcasts, media guides, team programs, brochures and licensed merchandise. Your promotions benefit the for-profit entity and its directors. Given that you and the for-profit entity have the same directors, you are, as a result, benefiting your own directors. Your operations serve private interests even though the officers or directors may not be compensated for their services as officers or directors. A realistic look at your operations and [REDACTED] shows the activities to be so interrelated as to be functionally inseparable.

You have stated the difference between your league and a for-profit league, such as the National Hockey League (NHL), is that yours is a developmental league for young athletes to improve their skills with the objective of receiving a scholarship for college hockey. Whereas the NHL is a professional league in which players are paid to play and it is their job to play. The distinction you provide may be correct as to players. However, there is one similarity that cannot be overlooked and that is that both you and the NHL are associations of for-profit businesses designed to promote your individual common business interests. Even though the players in your league are amateurs, the league does not substantially differ from a professional sports league. Your purpose to promote players for collegiate, professional, and even, Olympic competition is incidental to the private interests of your owners and Board members.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

[REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED] T:EO:RA:T:4
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4

[REDACTED] [REDACTED]